



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 1

1 CONGRESS STREET, SUITE 1100
BOSTON, MASSACHUSETTS 02114-2023

June 21, 2006

Robert W. Golledge, Jr., Commissioner
Massachusetts Department of Environmental Protection
1 Winter Street
Boston, MA 02108

Re: 2004 Clean Water Act Section 303(d) List Partial Approval/Disapproval

Dear Commissioner Golledge:

Thank you for your final submittal of the 2004 Clean Water Act Section 303(d) list, Massachusetts Year 2004 Integrated List of Waters - Category 5, dated April 19, 2005. In accordance with Section 303(d) of the Clean Water Act and 40 CFR §130.7, the U.S. Environmental Protection Agency (EPA) conducted a complete review of Massachusetts' 2004 Section 303(d) list, supporting documentation and *A TMDL Alternative Regulatory Pathway Proposal for the Management of Selected Mercury-Impaired Waters* (Mercury Proposal). EPA's review of Massachusetts' 2004 Section 303(d) list is attached.

Based upon our review of the submittal, we hereby partially approve and partially disapprove Massachusetts' 2004 303(d) list. Specifically, EPA approves the Commonwealth's decision to list waterbody segments and associated pollutants set forth in the listing document along with the Commonwealth's priority ranking for these waters and pollutants. However, EPA disapproves the Commonwealth's decision not to list the 90 lakes and ponds impaired by atmospheric deposition as set out in the Mercury Proposal. Massachusetts indicates in its submission that the total reductions needed in mercury air deposition to meet the Commonwealth's water quality standard range from 57 to greater than 90 percent. The Mercury Proposal points out that the mercury contributions from air deposition include at least 23 percent from international and background sources, which are not subject to state or federal regulation. EPA's own estimates indicate that an even larger share of deposition comes from non-U.S. sources. Therefore, EPA believes that listing the mercury impaired lakes and ponds is necessary because Massachusetts has not demonstrated that there are other pollution control requirements sufficient to achieve the reductions in mercury the Commonwealth estimates are needed to implement the applicable water quality standard.

Although EPA is disapproving the Commonwealth's decision to remove the mercury-impaired waters from the 303(d) list, EPA recognizes the significant efforts of Massachusetts to address the Commonwealth's mercury sources. Massachusetts is a leader among states in developing a comprehensive and aggressive mercury reduction program. As noted in the Commonwealth's submission, Massachusetts' mercury programs include strong regulatory controls on major mercury emitters, located within the Commonwealth, and pollution prevention programs for sources such as municipal waste combustors, dentists, and schools. While EPA has determined that the best way to address mercury impaired waters is within the context of the 303(d) listing process (as discussed more fully in the attached memorandum), EPA is also committed to developing a longer-term national framework for listing mercury impaired waters and developing mercury TMDLs, an effort in which we will involve Massachusetts and other states in the future.

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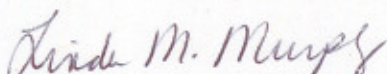
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EPA will open a public comment period to receive comments concerning our decision to add these waters to the Commonwealth's 303(d) list. After considering comments received from the public, EPA will make any appropriate revisions to its decision to add the waters to the list and will transmit to the Commonwealth the list of waters added.

I would like to thank your staff for their assistance in working with my staff in finalizing the 2004 Section 303(d) list. We look forward to continued cooperation with MA DEP in implementing the requirements under Section 303(d) of the CWA. Please feel free to contact me or Mike Hill at 617-918-1398, if you have any questions or comments on our review.

Sincerely,



Linda M. Murphy, Director
Office of Ecosystem Protection

Enclosure

cc: Arleen O'Donnell MA DEP
Glenn Haas, MA DEP
Rick Dunn, MA DEP
Arthur Johnson, MA DEP
Anne Leiby, EPA
Steve Silva, EPA
Mike Hill, EPA